

not to infer, however, that past rules are generally controlling.⁽⁶⁾ A rule of a past Congress assuming to control a future House as to rules at organization is not binding,⁽⁷⁾ and a statutory enactment incorporated into the rules of a preceding Congress and enacted under the rule-making power of the House and Senate has no effect in a new Congress until expressly adopted.⁽⁸⁾

§ 2. Types of Meeting; Sessions

Congress assembles in various ways, as determined by the status of Congress at its last meeting

at commencement of new Congress), §637, *House Rules and Manual* (1973), prescribe the procedure at organization which is generally followed, although the rules are not technically in force at that time.

6. See, *e.g.*, 5 Hinds' Precedents §§5590, 5604.
7. 5 Hinds' Precedents §§6765–66.
8. The requirements of the Legislative Reorganization Act of 1970, Pub. L. No. 91–510, 84 Stat. 1140, incorporate as an exercise of the rule-making power into the rules of the 91st Congress, were ruled not applicable to the proceedings of the 92d Congress before the adoption of rules. 117 CONG. REC. 132, 92d Cong. 1st Sess., Jan. 22, 1971 (Speaker Carl Albert, Okla.) (see § 12.9, *infra*).

and by the provisions of the twentieth amendment, requiring assembly at least once a year.⁽⁹⁾ The two types of “assembly” contemplated by the twentieth amendment include the convening of the first session of a new Congress and the convening of the second or following session of an existing Congress.⁽¹⁰⁾ A third category of assembly, the extra session, may arise when the Congress is convened pursuant to Presidential proclamation after the final adjournment of one session but before the constitutional day for the convening of the next session.⁽¹¹⁾ When the President ex-

9. Section 2. The twentieth amendment, ratified Feb. 6, 1933, superseded U.S. Const. art. I, § 4, clause 2.
10. See *House Rules and Manual* § 590 (1973). See § 3, *infra*, for determination of the meeting time of Congress.
11. For the President's authority to convene Congress, see U.S. Const. art. II, § 3. For characterization of meetings called by the President, and whether they constitute a new session, see § 3, *infra*. See also *Ashley v Keith Oil Corp.*, 7 F.R.D. 589 (D. Mass. 1947); compare Jefferson's Manual, *House Rules and Manual* § 588 (1973). For instances of extra sessions since 1936, see §§ 2.1–2.2, *infra*.

In the 93d Congress, the concurrent resolution adjourning *sine die* the 1st session (H. Con. Res. 412) provided that the leadership could reassemble Congress.

ercises his power to convene, a Congress may hold three or more sessions during its term.⁽¹²⁾ The last category of assembly, as the term is used generally to connote a meeting, occurs during a session of Congress, after adjournment either to a day certain or from day to day.

The final adjournment of one session, preceding the opening of a new session, is usually but not always accomplished by a *sine die* adjournment resolution.

For example, the 76th Congress, 3d session, terminated and the 77th Congress, 1st session, began at noon on Jan. 3, 1941, pursuant to the twentieth amendment; neither a concurrent resolution providing for adjournment *sine die* nor a law changing the convening date of the 77th Congress had been passed. The House adopted a simple motion to adjourn on Jan. 2, and the Senate stayed in session up to noon on Jan. 3 when the 3d session of the 76th Congress expired.⁽¹³⁾

These distinctions are important in determining the procedure

of the House and the power of its Members when it meets. At the beginning of the first session of a new Congress, the House is without the anchors of rules of procedure, elected officers, or duly sworn Members. At the beginning of a consecutive session of an existing Congress, on the other hand, Members have been sworn and rules and officers remain the same. The openings of new sessions, however, whether of a new Congress, or of an old Congress, or by Presidential proclamation, share one common procedural characteristic: the ascertainment of a quorum must be the first order of business. Congress is not "assembled" until a quorum is present in both Houses, and each House has been notified of the quorum in the other.⁽¹⁴⁾ That re-

14. 6 Cannon's Precedents § 5.

A message from one House that a quorum has appeared is not delivered in the other until a quorum has appeared there also. 1 Hinds' Precedents § 126.

Although art. I, § 5, clause 1 of the Constitution requires a quorum to do business, the House has proceeded to business at the beginning of a second session despite the lack thereof in the Senate (1 Hinds' Precedents § 126), and both Houses have permitted the oath to be administered in the absence of a quorum (1 Hinds' Precedents §§ 174, 181, 182; 4 Hinds' Precedents § 875).

12. For historical commentary on the number of sessions per term, see § 3, *infra*.

13. See 86 CONG. REC. 14059, 76th Cong. 3d Sess., Jan. 3, 1941. See also § 2.4, *infra*, and 8 Cannon's Precedents § 3375.

quirement distinguishes the opening of a session from the assembly of Congress during a session, where a quorum is not required unless the lack thereof is challenged.⁽¹⁵⁾ There are, of course, other proceedings on the opening day of a session which do not occur at regular daily meetings, such as the notification to the President of the assembly of Congress.⁽¹⁶⁾

The point in time at which the elected Congress becomes the Congress “assembled” has been a subject of much discussion, as the determination of that question may define the authority of Congress to act in an official capacity.⁽¹⁷⁾ The language of the Constitution, in empowering each House to determine the rules of its proceedings and to elect its officers, clearly contemplates the assembly as being a “House” before the adoption of rules or election of officers.⁽¹⁸⁾ No definitive rule can, however, be laid down as to the authority of Congress to act before

organization, without looking specifically at the act in question and at the stage of organization, factors which receive detailed analyses elsewhere in this chapter. As a rule, only housekeeping resolutions are considered during organization, although a major bill may on occasion be acted upon before organization is completed by the adoption of rules.⁽¹⁹⁾ A related question, whether Congress was in session at a particular time, may become a justifiable controversy when the effectiveness of a congressional or Presidential act depends on the determination.⁽²⁰⁾

15. See Ch. 20, *infra*. On at least one occasion, a quorum was not present at the opening day of the second session. 10 ANNALS OF CONG. 782, 6th Cong., 2d Sess., Nov. 17, 1800 (the date Congress moved permanently to the District of Columbia).

16. See § 7.1, *infra*.

17. See 1 Hinds' Precedents §§ 87–88.

18. See 1 Hinds' Precedents § 82.

19. See, in general, § 12, *infra*. For consideration of legislation before rules adoption, see § 12.8, *infra*.

20. On the question whether a legislative body was technically in session at the time a bill was passed, there are two rules of statutory construction: under the conclusive presumption rule, courts refuse to go beyond authenticated bills to inquire whether the legislative body was in session; the opposite view admits extrinsic evidence. Sutherland, *Statutes and Statutory Construction* § 406 (3d. ed. 1943). Federal courts accord a presumption in favor of regularity to the proceedings of Congress. See *Yellin v U.S.*, 374 U.S. 109, 146 (1963); *Barry v U.S. ex rel Cunningham*, 279 U.S. 597, 619 (1929).

Whether Congress was in session at a particular time may become a justifiable controversy when the ef-

Extra Sessions; Presidential Proclamation

§ 2.1 On two occasions since 1936, Congress has held three sessions, the second, or special session, being convened by Presidential proclamation following the *sine die* adjournment of the first session.

Following the *sine die* adjournment of the first session of the 75th Congress on Aug. 21, 1937,⁽²¹⁾ Congress was convened for its second session on Nov. 15, 1937, before the constitutional day of meeting, by Presidential proclamation.⁽²²⁾ The third session of the 75th Congress met on the constitutional day, Jan. 3, 1938,⁽²³⁾ following the final adjournment of the second session.

Similarly, the second session of the 76th Congress was convened by Presidential proclamation on Sept. 21, 1939,⁽²⁴⁾ before the con-

fectiveness of a Presidential veto depends on the determination. *Wright v U.S.*, 302 U.S. 583 (1938); *Pocket Veto Case*, 279 U.S. 655 (1929). Generally, see Ch. 24, *infra*.

21. 81 CONG. REC. 9678, 75th Cong. 1st Sess.

22. 82 CONG. REC. 7, 75th Cong. 2d Sess.

23. 83 CONG. REC. 6, 75th Cong. 3d Sess.

24. 85 CONG. REC. 7, 76th Cong. 2d Sess.

stitutional day of meeting for the second session, Jan. 3, 1940. The third session of the 76th Congress convened on Jan. 3 subsequent to the final adjournment of the second session.⁽²⁵⁾

§ 2.2 When the House convenes, pursuant to Presidential proclamation, following the *sine die* adjournment of a session, the Speaker calls the House to order and the Clerk reads the proclamation of the President convening the extraordinary session.

On Nov. 15, 1937,⁽²⁶⁾ following the *sine die* adjournment of the first session on Aug. 6, 1937, Speaker William B. Bankhead, of Alabama, called the House to order and directed the Clerk to read the following proclamation:

CONVENING THE CONGRESS IN EXTRA
SESSION BY THE PRESIDENT OF THE
UNITED STATES OF AMERICA

A PROCLAMATION

Whereas public interests require that the Congress of the United States should be convened in extra session at 12 o'clock noon on the 15th day of November 1937, to receive such communication as may be made by the Executive:

25. 86 CONG. REC. 5, 76th Cong. 3d Sess.

26. 82 CONG. REC. 7, 75th Cong. 2d Sess.

Now, therefore, I, Franklin D. Roosevelt, President of the United States of America, do hereby proclaim and declare that an extraordinary occasion requires the Congress of the United States to convene in extra session at the Capitol in the City of Washington on the 15th day of November 1937, at 12 o'clock noon, of which all persons who shall at that time be entitled to act as Members thereof are hereby required to take notice. . . .

§ 2.3 When Congress is convened by the President for a special and additional session, it may provide appropriations, by joint resolution, for extra mileage expenses of Members and additional wages of House employees thereby incurred.

On Sept. 25, 1939,⁽²⁷⁾ the House agreed to a joint resolution appropriating payment for expenses incident to the second and extraordinary session of the 76th Congress, convened by Presidential proclamation. The appropriations covered mileage expenses incurred by the Members, Delegates, and Commissioners of Congress and by the Vice President, and wages for the pages of the Senate and the House during the term of the second session.

Interval Between Sessions

§ 2.4 On one occasion since 1936, the Senate stayed in

²⁷. 85 CONG. REC. 16, 76th Cong. 2d Sess.

session until the date and hour when one Congress expired and the next one began pursuant to the twentieth amendment.⁽²⁸⁾

On Jan. 3, 1941,⁽¹⁾ the Senate of the 76th Congress, 3d session, convened at 11:30 a.m. At 11:43 a.m. the Senate took a recess until 11:55 a.m. Further proceedings were carried as follows in the Record:

The third session of the Seventy-sixth Congress expired automatically, under constitutional limitation, when the hour of 12 o'clock arrived.

§ 3. Time of Meeting

The Constitution requires that the Congress assemble at least once a year on either the date specified by the Constitution—January 3—or on a date appointed by the Congress.⁽²⁾ Since

²⁸. For other instances where one session of Congress followed another without appreciable interval, see 5 Hinds' Precedents § 6690; 8 Cannon's Precedents § 3375.

1. 86 CONG. REC. 14059, 76th Cong. 3d Sess. The House had adjourned pursuant to a simple motion to adjourn on Jan. 2, 1941.

2. U.S. Const. art. I, § 4, clause 2, providing for annual assembly on the first Monday in December, was superseded by the twentieth amend-